

CLERK TRUST ASSESSOR RECORDER  
Kern County Official Records

SABRINA

Pages: 12

6/24/1997

11:20:50

RECORDING REQUESTED BY:

The Burlington Northern and  
Santa Fe Railway Company

WHEN RECORDED MAIL TO:

Department of Toxic Substances Control  
Fresno District Office  
1515 Tollhouse Road  
Clovis, CA 93611  
Attention: Kevin Shaddy

DOCUMENT #: 0197082772



0197082772

|          |       |
|----------|-------|
| Fees...  | 37.00 |
| Taxes... |       |
| Other... | 3.00  |
| TOTAL    |       |
| PAID..   | 40.00 |

Stat. Types: 1

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT  
TO LIMIT USE OF PROPERTY  
WASCO LEASE SITE  
SANTA FE RAILWAY, WASCO, CALIFORNIA

This Covenant and Agreement (Covenant) is made on the 16<sup>th</sup> day of June, 1997 by The Burlington Northern and Santa Fe Railway Company (Covenantor), who is the owner of record of certain property (the Property), as described in the Atchison, Topeka and Santa Fe Railway Company Deeds No. 2932, 2928, and 45880, situated in Wasco, County of Kern, State of California and by the California Department of Toxic Substances Control (Department). Portions of the Property as identified in each of the aforementioned deeds are identified on page 1 of Exhibit "A" attached hereto and incorporated herein by this reference:

- A. Portions of the Property have been the site of a previous release of hazardous substances. The portion of the Property identified and described in Exhibit "A" as the "Limited Use Area" contains residual concentrations of hazardous substances in soils after remediation which will not pose a potential health risk providing future use of the "Limited Use Area" is controlled within certain restricted use requirements.
- B. The release of hazardous substances resulted in the contamination of shallow soils on portions of the Property with DDT<sub>TOT</sub><sup>(1)</sup>. Soils containing these substances in excess of the approved health based remediation goal of 25 parts per million (ppm) have been removed. Remaining soils containing DDT<sub>TOT</sub> at average concentrations exceeding 1.0 ppm

<sup>1)</sup> The term DDT<sub>TOT</sub> collectively describes the three isomers DDT, DDD and DDE.

and less than the health based goal of 25 ppm are confined to an area approximately 137 feet wide by approximately 221 feet long. This area, which has been covered with crushed rock and fenced, constitutes the "Limited Use Area" as identified in Exhibit "A". The purpose of the crushed rock is to prevent potential risks posed to human health associated with ingestion, inhalation, and dermal contact with the remaining soils and to prevent windborne erosion of the soils. The rock also serves to reduce the potential for surface water run-on or runoff to erode the remaining underlying soils or to distribute the soils offsite.

- C. Covenantor and the Department desire and intend that in order to protect the present or future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from DDT<sub>TOT</sub> which remains in soils within the "Limited Use Area."

## ARTICLE I

### GENERAL PROVISIONS

1.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, limitations, and conditions, (collectively referred to as "Limitations"), upon and subject to which that portion of the Property described as the "Limited Use Area" and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Limitations shall run with the land, and shall apply to and bind the respective successors in interest thereof. The Limitations are imposed only upon that portion of the Property defined as the "Limited Use Area." Each and all of the Limitations are imposed pursuant to Sections 25355.5 and 25356.1 of the Health and Safety Code and run with the land pursuant to Section 25355.5 Each and all of the Limitations are enforceable by the Department.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of that portion of the Property described as the "Limited Use Area", or any portion thereof, shall be deemed by their purchase, leasing, or possession of such property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Limitations as herein established must be adhered to. Future Owners and Occupants shall be subject to the Limitations contained herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Limitations set out herein shall be incorporated by reference in each and all deeds and leases of that portion of the Property described in Exhibit "A" as the "Limited Use Area."

1.04 Department Access to Property. Owner grants the Department access to that portion of the Property described as the "Limited Use Area" for non-intrusive inspection, surveillance, and monitoring. Access may be granted for maintenance, and other intrusive/non-intrusive activities consistent with the purposes of this covenant provided the Department can demonstrate that such activities are necessary to protect public health and safety and/or the environment.

## ARTICLE II

### DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean, rock cover constructed or placed upon the "Limited Use Area". Rock cover also implies a small portion of the "Limited Use Area" which is covered by a concrete slab which was preexistent to remediation activities. Rock cover, outside the "Limited Use Area", and other structures or fencing placed on the Property are not considered an improvement for purposes of this covenant.

2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to any portion of the Property which includes the "Limited Use Area", or any portion thereof.

## ARTICLE III

### DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Limitations on Use. Owner shall limit the use of that portion of the Property defined as the "Limited Use Area" as follows:

- A. Owner shall not allow the construction or placement of a building or structure on the "Limited Use Area" which is

intended for use as any of the following, or the use of an existing structure for the purpose of serving as any of the following without first applying for and receiving a written variance from the Department for that use pursuant to Article IV of this covenant and agreement:

- a. A residence.
- b. A hospital for humans.
- c. A school or day care center for persons under 18 years of age.
- d. Any permanently occupied human habitation other than those used for industrial or commercial purposes that are not specifically excluded above.

B. Owner shall not conduct activities within the "Limited Use Area", which may cause a potential threat to public health and the environment resulting from the release of hazardous substances contained in soils within the area.

3.02 Conveyance of Property. The Owner or Owners shall provide a notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.03 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to require that the Owner take those actions as deemed necessary by the Department to ensure that public health and/or the environment are protected. Such actions may include the requirement that the Owner modify or remove improvements constructed in violation of paragraph 3.01.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchases, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, limitations, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

## ARTICLE IV

### VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233, of the Health and Safety Code.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Limitations as they apply to that portion of the Property described as the "Limited Use Area". Such application shall be made in accordance with Section 25234, of the Health and Safety Code.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

## ARTICLE V

### MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served; or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To the Covenantor: The Burlington Northern and  
Santa Fe Railway Company  
2650 Lou Menk Drive  
Ft. Worth, TX 76131-2830  
Attn: AVP, Property Management

with copies to: The Burlington Northern and  
Santa Fe Railway Company  
P.O. Box 961050  
Ft. Worth, TX 76161-0050  
Attn: AVP, Property Management

To the Department: Department of Toxic Substances Control  
Northern California - Central  
Cleanup Operations Branch  
10151 Croydon Way, Suite 3  
Sacramento, CA 95827-2106  
Attention: James L. Tjosvold, P.E., Chief

5.03 Partial Invalidity. If any portion of the use Limitations set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Branch Chief, Central California Cleanup Operations Branch, Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Kern within ten (10) days of the date of execution.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

By: Ethel Allen Steele  
Title: Assistant V.P. Property Management  
Date: May 29, 1997

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

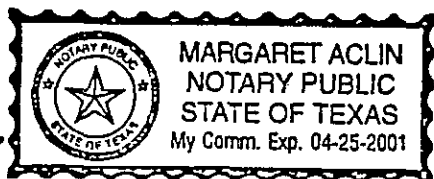
By: James L. Tjosvold James L. Tjosvold  
James L. Tjosvold, P.E.  
Title: Chief, Northern California - Central  
Cleanup Operations Branch  
Date: 6/3/97 6/16/97

STATE OF TEXAS )

COUNTY OF TARRANT )

On May 29<sup>th</sup>, 1997 before me, the undersigned,  
a Notary Public in and for said state, personally appeared  
Ethel Allen Steele, personally known to me or proved  
to me on the basis of satisfactory evidence to be the person who  
executed the within instrument as Assistant V.P. Property Management  
of the corporation that executed the within instrument, and  
acknowledged to me that such corporation executed the same  
pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Margaret ACLIN

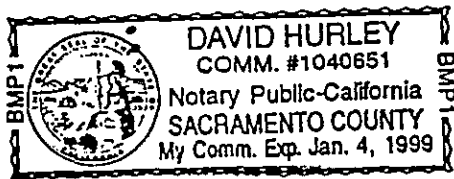
Notary Public in and for said  
County and State

STATE OF CALIFORNIA )

COUNTY OF SACRAMENTO )

On 6-3-, 1997 before me, the undersigned,  
a Notary Public in and for said state, personally appeared  
JAMES TJOSVOLD, personally known to me or proved  
to me on the basis of satisfactory evidence to be the person who  
executed the within instrument as BRANCH CHIEF,  
of the Department of Toxic Substances Control, the agency that  
executed the within instrument, and acknowledged to me that such  
agency executed the same.

WITNESS my hand and official seal.



*David Hurley*

Notary Public in and for said  
County and State

**ALL-PURPOSE ACKNOWLEDGMENT**

State of CALIFORNIA  
County of SACRAMENTO

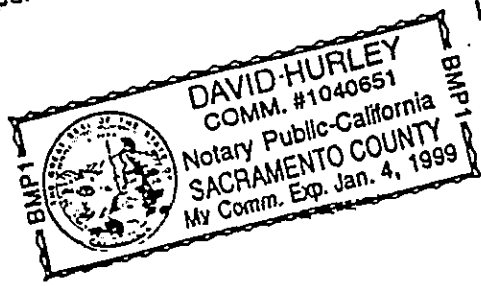
On 6-16-97 before me, DAVID HURLEY  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JAMES TIOSUOKO  
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal



*[Signature]*  
SIGNATURE OF NOTARY

**CAPACITY CLAIMED BY SIGNER**

- ☐ INDIVIDUAL(S)
- ☐ CORPORATE OFFICER(S) \_\_\_\_\_ TITLE(S) \_\_\_\_\_
- ☐ PARTNER(S)
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ SUBSCRIBING WITNESS
- ☐ GUARDIAN/CONSERVATOR
- ☒ OTHER: Chief Northern  
Calif. Central Cleanup  
Operations Branch

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

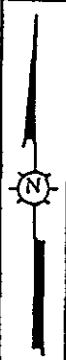
Dept Toxic Substances  
Control

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or Type of Document Covenant Santa Fe Rail way Waco  
Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_  
Signer(s) Other Than Named Above \_\_\_\_\_

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

**EXHIBIT A**



(2) DIMENSIONS PROVIDED FOR INFORMATION ONLY. REFER TO LEGAL DESCRIPTION ON PAGE 2 OF THIS EXHIBIT.

RAIL TRACK

**TRC ENVIRONMENTAL SOLUTIONS, INC.**

EXHIBIT "A"

ALL THAT PORTION OF SECTION 7, TOWNSHIP 27 SOUTH, RANGE 25 EAST, MOUNT DIABLO MERIDIAN, CITY OF WASCO, COUNTY OF KERN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF "9TH" STREET WITH THE CENTERLINE OF "H" STREET AS SAID STREETS ARE SHOWN ON THE PLAT OF THE TOWN OF WASCO, DATED JANUARY 3, 1899, AND FILED IN THE KERN COUNTY RECORDER'S OFFICE ON JANUARY 30, 1900, SAID POINT BEING MARKED BY A 2-INCH IRON PIPE WITH TAG "L.S. 3779"; THENCE SOUTH  $01^{\circ}13'36''$  WEST, ALONG THE CENTERLINE OF SAID "H" STREET, A DISTANCE OF 350.00 FEET; THENCE NORTH  $88^{\circ}46'24''$  WEST A DISTANCE OF 40.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SAID "H" STREET AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH  $01^{\circ}13'36''$  WEST, ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 221.00 FEET; THENCE NORTH  $88^{\circ}46'24''$  WEST A DISTANCE OF 136.93 FEET; THENCE NORTH  $01^{\circ}11'01''$  EAST, A DISTANCE OF 221.00 FEET; THENCE SOUTH  $88^{\circ}46'24''$  EAST A DISTANCE OF 137.10 FEET TO THE TRUE POINT OF BEGINNING.

PREPARED BY:

  
MICHAEL S. BERRY P.L.S. 4504

